

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

MAY 3, 2005

+ + + + +

The Public Meeting convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, DC 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner (NPS)
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Public Meeting held on May 3, 2005.

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PRELIMINARY MATTERS

3

APPLICATION NO. 17313 OF EDWARD ERTEL  
AND JENNIFER SQUIRES

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P-R-O-C-E-E-D-I-N-G-S

10:41 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen, let me call to order the third of May, 2005, public meeting of the Board of Zoning Adjustment for the District of Columbia. My name is Geoff Griffis, Chairperson.

Joining me today is Ms. Miller, the Vice Chair, and representing the National Capital Planning Commission, with us is Mr. Mann. Mr. Etherly is not with us this morning, as he is on scheduled travel and there is no Zoning Commission Member with us this morning, for the decision making.

Copies of today's agenda are available for you. I'm going to skip right through this as we have one case for decision making, and I think we should get right to it.

Let me say good morning to Ms. Bailey and also Mr. Moy, and ask Mr. Moy, is there any preliminary matters for the Board's attention at this time?

MR. MOY: No, sir, not this morning.

CHAIRPERSON GRIFFIS: Good. Then why don't we call the first case for the decision.

MR. MOY: Yes, good morning, Mr. Chairman

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1 and members of the Board. The case this morning is  
2 Application Number 17313 of Edward Ertel and Jennifer  
3 Squires, pursuant to 11 DCMR 3103.2, for a variance  
4 from the lot occupancy requirements under Section 403,  
5 or 403, and a variance from the non-conforming  
6 structure provisions under Subsection 2001.3, to allow  
7 an addition to a single-family, row dwelling in the R-  
8 4 District at premises 924 G Street, S.E.

9 That's in Square 949, Lot 33. On April  
10 26<sup>th</sup>, 2004, 2005, rather, the Board completed public  
11 testimony on the application and scheduled its  
12 decision on May 3<sup>rd</sup>, 2005. The Board allowed the  
13 record to remain open to permit post-hearing  
14 documents.

15 The Applicant made their filing and it is  
16 in your case folders identified as Exhibit 27 and 28.

17 Also, the staff notes for the Board, that the ANC-6B  
18 report, which is dated April 25<sup>th</sup>, 2005, was received  
19 by the Office of Zoning on the 27<sup>th</sup> of April, after the  
20 hearing date of April 26, and that's in your case  
21 folders identified as Exhibit 26.

22 And that will complete the Board's  
23 briefing, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Okay, thank you very  
25 much, Mr. Moy. Exhibit 26 is the ANC report, is that

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1 correct, is that what you said?

2 MR. MOY: Yes, sir.

3 CHAIRPERSON GRIFFIS: Excellent. And I  
4 don't see any reason why we wouldn't waive our  
5 requirements for filing time on that and accept it  
6 into the record, unless there's any concern with that.

7 Let me go through as Mr. Moy has  
8 indicated, of course we did have the additional  
9 filings which I thought were pertinent. This was a  
10 case that we looked at, not too long ago, and  
11 obviously it's been fresh and we've spent some time  
12 reviewing it.

13 I would note that we do have the Office of  
14 Planning not in favor or recommending not to approve  
15 this application. And obviously that always raises  
16 some concern of the Board, or at least some attention  
17 to direction of elements that need to be addressed.

18 Clearly we've looked and strongly rely on  
19 the Office of Planning's analysis of the zoning  
20 regulations and policy and how that fits into our -  
21 it's one element and one aspect, and an important one,  
22 of our decision making, in pulling together the full  
23 record on any Applicant's case.

24 To that, though, in my mind, looking at  
25 this, first of all, I'll set off that I believe that

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1 there's a fairly persuasive case moving for approval.

2 And in limited deliberation to open up here, I think  
3 there is an incredible amount of confluence of factors  
4 that have created the uniqueness that has been  
5 persuasively shown.

6 The practical difficulty, I think, is also  
7 there, but again is not, one might say, full. And so,  
8 why do I bring this up at this juncture? Well,  
9 obviously we're decision making.

10 But let me be direct. I believe that with  
11 the concerns of the Office of Planning that they're  
12 arising, first of all, out of the reliance on the  
13 historic nature of this.

14 But more importantly, in my mind, looking  
15 at the fact that this is going through the Historic  
16 Preservation Review, I believe that it would probably  
17 be administrative efficiency if we were to postpone  
18 decision on this, and have this go through Historic  
19 Preservation, to be reviewed.

20 My point being that this may, in fact,  
21 change. It may fundamentally change. And it may  
22 impact the zoning that's being asked for now. So  
23 rather than having an Applicant get, let's say  
24 hypothetically, get an approval today.

25 Move to HPRB, and it changes. And then

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1 coming back here. Let's keep this all in play and  
2 let's keep this running, and I think that is the most  
3 efficient way to do this.

4 That will also, conceivably, with any  
5 changes that take place, would allow for the other  
6 agencies, the ANC and the Office of Planning to  
7 address any changes that came forward.

8 I was particularly pleased with the last  
9 filing of the Applicant, and that is the restating of  
10 the tests, the uniqueness and practical difficulty and  
11 whether it would impair the integrity of the zone  
12 plan.

13 I also was particularly pleased with the  
14 photographs in establishing other conditions of lot  
15 configurations within Capitol Hill, and I would, I  
16 think I, well, I think that those are important  
17 documentations into the record on this case.

18 But let me open it up to others and, I  
19 guess, to be, to summarize what I would suggest at  
20 this point, for a quick decision, is that we postpone  
21 a decision to it time certain, and look to a positive  
22 outcome in design being brought back with Historic  
23 Preservation Review for our zoning analysis in the  
24 case. Others?

25 MEMBER MANN: I would just add that, I

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1 think you said something about administrative  
2 efficiency?

3 CHAIRPERSON GRIFFIS: Right.

4 MEMBER MANN: And, I mean it's not simply  
5 for the Applicant's benefit, our administrative  
6 efficiency. I mean I think this will work for the  
7 efficiency of the application as well.

8 It's not like we're just doing this to  
9 make it easier on ourselves. I think this could  
10 potentially help the Applicant in this process.

11 CHAIRPERSON GRIFFIS: Good, I absolutely  
12 agree.

13 VICE CHAIRPERSON MILLER: Yes, I'd also  
14 like to add that I think HPRB's input in this case  
15 would make our record more complete and more full.

16 And my initial inclination on this case is  
17 that the factors are pretty strong for variance, but I  
18 think we need a full case. I think the Applicant did  
19 a good job supplementing the record after the hearing.

20 And I think that OP's concerns, with  
21 respect to uniqueness and practical difficulty, were  
22 based on an analysis of factors before Applicant  
23 submitted it.

24 And I think, and didn't contemplate case  
25 law that may support this case. So, in any event, I

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1 don't think this should be a sign and this Board has  
2 serious problems, necessarily, with the case, but that  
3 it would be a more full and complete and strong case  
4 to look at, after HPRB.

5 CHAIRPERSON GRIFFIS: Good. Okay, if  
6 that's the case then, I suggest that we set a date  
7 certain that we will postpone our decision to. And I  
8 would suggest that we do that the first Tuesday in  
9 September.

10 Mr. Moy, if you would save that date for  
11 me?

12 MR. MOY: Yes, that date, the regular  
13 public meeting date is September the 13<sup>th</sup>, 2005.

14 CHAIRPERSON GRIFFIS: Excellent, good. Now  
15 two points to that. We will keep the record open, of  
16 course, for any other additional filings from the  
17 Applicant.

18 We would suggest that the Applicant give  
19 those, any filings, to the Office of Planning, and  
20 also to the ANC. We could keep the record open for  
21 any additional, supplemental filings, from those  
22 groups.

23 Lastly, the 13<sup>th</sup> of September is when we  
24 would bring this up again on our own accord. If this  
25 was ready to go prior to that. HPRB approval comes

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1 through next week, then we're ready to go at any time.

2 So we would look to the Applicant to give  
3 us any state that would be appropriate that they will  
4 be ready, of course, with the filing and all that.

5 I'm not adverse, at this point, knowing  
6 our schedule. We don't meet in August, but I wouldn't  
7 be adverse if this was to be completed through HPRB in  
8 June, to set a special public meeting in July, in  
9 order to expedite this.

10 So we can be very flexible in terms of our  
11 schedule, in looking at this. This is, you know, it's  
12 too bad in some respects, the small nature of this,  
13 that it's taken so much time and energy to get around,  
14 but I think that really speaks to how important we  
15 take every single case.

16 But we also don't want to be cumbersome  
17 for our schedules, Mr. Mann has said, and the Board  
18 strongly feels for any Applicant's schedule. So, that  
19 being said, I think that's what we should follow  
20 through with today.

21 Let me also just state that, of course the  
22 record - well, okay, there it is. Anything else,  
23 then, Mr. Moy?

24 MR. MOY: No, I think that's, that  
25 completes the agenda for the public meeting today.

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1 CHAIRPERSON GRIFFIS: Good, thank you.  
2 Thank you all very much. I hope that's clear what the  
3 Board is trying to endeavor to do. And we'll look  
4 forward to seeing this, as soon as possible.

5 MR. ERTEL: (Speaking off microphone.)

6 CHAIRPERSON GRIFFIS: Oh, excellent, okay.  
7 Good. Coming out of the decision making, then, on  
8 this case, just procedurally then, someone off the  
9 record here, but totally on it. You indicated that  
10 it's May, you're set on the schedule to go to HPRB.

11 MR. ERTEL: (Speaking off microphone.)

12 CHAIRPERSON GRIFFIS: Okay. And so that  
13 could, conceivably, just Board members for our own  
14 scheduling and understanding, we could conceivably  
15 look at something in June/July.

16 So, as I said, our schedule is flexible  
17 for, right, right. For your needs in getting this  
18 done as quickly as possible. Work with staff in terms  
19 of the schedule, because obviously if we get, if we  
20 have new submissions and we're waiting for things to  
21 be submitted from Office of Planning or ANC, we're  
22 going to have to schedule this, at least to give them  
23 a week, if not two weeks.

24 So, as soon as we hear something, let's  
25 get this on the schedule and we'll keep moving on it.

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1 MR. ERTEL: (Speaking off microphone.)

2 CHAIRPERSON GRIFFIS: Actually, why don't  
3 you come up. Procedural questions, let's take, let's  
4 just, no, I'm sorry, just have a seat. You just need  
5 to be on the microphone, otherwise the transcript will  
6 show me talking to nobody.

7 MR. ERTEL: I apologize, talking to the  
8 sky. What would we need to go back to the ANC for?  
9 If the design changed?

10 CHAIRPERSON GRIFFIS: Yes. I think for our  
11 purposes, in terms of this, in terms of our hearing,  
12 you need to provide the ANC with everything that's  
13 being provided into the record here.

14 Now, if you talk, your judgement to go  
15 present to the ANC or I think that would be well  
16 served. I mean you have right now a recommendation of  
17 the ANC that they support the application. So, if it  
18 fundamentally changes, you obviously want them to  
19 continue their support.

20 MR. ERTEL: Oh, right, right, right.

21 CHAIRPERSON GRIFFIS: So I would just keep  
22 them updated, I think, is the point of it. Let them  
23 know exactly what's happening, and that way,  
24 hopefully, their support won't change.

25 MR. ERTEL: Right.

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1 CHAIRPERSON GRIFFIS: Does that make sense?

2 MR. ERTEL: Sure.

3 CHAIRPERSON GRIFFIS: But in terms of our  
4 requirements of, you know, filing and notice and all  
5 that, that's been completed for this application. So  
6 we're not looking for any additional notification or  
7 hearings or anything of that nature from the ANC  
8 realm. Yes.

9 VICE CHAIRPERSON MILLER: I just want to  
10 comment that I think that we would be interested in  
11 seeing, certainly, the HPRB decision, and then if  
12 there was anything that the Applicant wanted to  
13 submit, stating how that decision may or may not  
14 effect the variance application.

15 MR. ERTEL: Right, so if the HPRB changes  
16 the design, I think I'd have to go back to the ANC and  
17 then, obviously, show them the new design and what  
18 not.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. ERTEL: Okay.

21 CHAIRPERSON GRIFFIS: And what Ms. Miller  
22 is saying is, I think should be fully understood also  
23 is the proceedings before HPRB, which are much more  
24 design and historically oriented, how is that  
25 impacting the zoning application as coming back before

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1 us.

2 MR. ERTEL: Okay, I got you.

3 CHAIRPERSON GRIFFIS: Okay.

4 VICE CHAIRPERSON MILLER: And then they  
5 would have a chance to respond.

6 MR. ERTEL: Right, right, right. Okay, I  
7 got you.

8 VICE CHAIRPERSON MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Great. Okay, any  
10 other procedural questions?

11 MR. ERTEL: No, I think I understand.

12 CHAIRPERSON GRIFFIS: Good. And if not, as  
13 I say, the staff at the Office of Zoning is excellent,  
14 and they're totally up-to-date on the process of this  
15 one.

16 So, they can answer any specific questions  
17 you have in terms of scheduling or process of filings.

18 MR. ERTEL: I appreciate your time.

19 CHAIRPERSON GRIFFIS: Great. No, we  
20 appreciate yours. Okay, very well then, let's to move  
21 to go ahead.

22 MR. ERTEL: Thank you very much.

23 CHAIRPERSON GRIFFIS: Thank you. If  
24 there's nothing further then, Mr. Moy, why don't we  
25 adjourn the public meeting of the 3<sup>rd</sup> of May.

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(Whereupon, the proceedings in  
the above-entitled matter were  
concluded at 10:55 a.m.)

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